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and Payment Card Interchange Fees**

**- Background Note -**

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This document was prepared by the Superintendency of Industry and Commerce (SIC) Secretariat to serve as a Background paper for the discussion on Competition and Payment Card Interchange Fees Digital that will take place at the Latin American and Caribbean Competition Forum on 20-22 September 2021, via virtual zoom meeting.

*The opinions expressed and arguments employed herein do not necessarily reflect the official views of the Superintendency of Industry and Commerce.*

More documentation related to this discussion can be found at [oe.cd/lacfc](http://oe.cd/lacfc).

Please contact Ms. María Manuela Palacio [[c.mpalacio@sic.gov.co](mailto:c.mpalacio@sic.gov.co)] or Mr Mateo Varela [[mvarrela@sic.gov.co](mailto:mvarrela@sic.gov.co)] if you have any questions regarding this document.

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*Session III: Competition and Payment Card Interchange Fees*

*- Background note by the Superintendency of Industry and Commerce –*

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## 1. Introduction

1. Innovation and the increasing integration of the global economy have been driving technological progress and are continuously transforming payments systems and solutions worldwide. The rapid growth of e-commerce has also been instrumental to the development and improvement of national payment systems and vice versa; and so, it has contributed greatly, alongside innovation and competition, to the creation of new and novel market dynamics, the arrival of new actors, services, and methods, and to the evolution and adaptation of traditional offering of payment services.

2. The development of the payment sector landscape in countries from the Latin American and Caribbean region is heterogeneous. Some of the elements that influence the different levels of maturity and diversity of payment systems in the region are banking penetration, access to internet and mobile devices, consumer preferences and cultural features, as well as the relationships among traditional and new market players. These factors have also shaped legal and regulatory frameworks, and weight on the different approaches that competition authorities have adopted to address the challenges posed by said market dynamics.

3. The activity of competition authorities and regulators worldwide shows that some of the challenges concerning payment systems focus on the appraisal of the competitive effects of novel financial operations and schemes, and, on the assessment of the interplay amongst the developing set of stakeholder groups, which may include mobile operators, financial institutions, customers, merchants, and intermediaries. In this context, agencies have studied potential competition issues raised by the disruption from FinTech and BigTech in the retail banking market and the entry of alternative payment providers and their new payment methods vis a vis traditional market agents<sup>1</sup>.

4. The most prominent and longstanding questions relate to whether certain restraints on merchants may be welfare-enhancing or anticompetitive, and whether intervening potential market distortions related to the interchange fee is the most suitable approach to overcoming competition-related issues. Failing to properly address these failures may generate and even reinforce market inefficiencies. In the context of card payment systems particularly, these inefficiencies may result, for example, in the high frequency with which merchants' resort to the costliest payment mechanisms available in the markets. Because of card payment rules and other constraints, merchants are prevented from passing on or managing those costs and end up placed at a disadvantage.

5. Some other challenges relate to the multi-sidedness of payment systems and include defining which is the most appropriate strategy to market definition and to the subsequent determination of a particular agent's market power within the network. Both endeavours are crucial to the outcome of antitrust enforcement in this sector.

6. The current paper will discuss competition and payment systems. It will first present the relevant notions of the economic logic of multisided markets and interchange fees with the purpose of describing the dynamics within payment systems; second, puts forward recent technological developments and the evolution of payment systems, and outlines the different payment areas that are being affected by new technologies; finally, it provides a thorough analysis of competition and regulatory concerns on the matter through the presentation of case studies on ex-ante and ex-post approaches.

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<sup>1</sup> It is worth noting that role of traditional institutions (banks) enables them to take advantage of the greater trust from users, and of the Information and Communication Technology (ICT) to reduce cost. This has allowed banks to have had the incentives to deploy the online infrastructure and expand their reach (OECD, 2006a).

7. The document reflects mostly on the challenges faced by competition authorities in Latin America and the Caribbean region. The case studies that are presented reveal that their experiences on card payment systems, just as those from different authorities worldwide, are mostly related to competition issues with interchange fees, market foreclosure and exclusionary practices. These case studies also show how the LAC region has dealt with these issues.

## 2. Relevant notions: the economic logic of multisided markets and interchange fees

8. How payment systems work, the relationships among groups of stakeholders, and the rationales behind the rules set for the interactions between them have been explained referring to the economics approach to two-sided markets<sup>2</sup>. Essentially, two-sided markets are those in which a firm serves two distinct interconnected groups of consumers (Brekke, 2017). In some cases, the firm is a platform which allows for the interaction between two interdependent groups of economic agents: one of the groups comprised of consumers of a given good or service, and the other group, by the suppliers of that given good or service. In these types of markets, each of the groups influences the conditions of its side of the market, while the platform, in turn, assumes an intermediation role by managing the network that enables the interaction between both groups of agents. It is usual to find that the platform owner sets access fees to the platform for at least one of the two groups of agents (Rochet & Tirole, 2006b). This two-sided market setup poses a central issue for competition and regulatory authorities resulting from the emergence of network externalities (positive or negative), which are generated both within and between the groups of economic agents when joining and interacting within the platform. These externalities play an important role in determining access rates to the platform (Bardey *et al*, 2014; Collyer *et al*, 2017).

9. Credit card payment systems are complex multisided markets. The platform connects cardholders with merchants to ensure that the cardholder can purchase the good or service sold by the merchant. Under this scenario, the network externality is usually positive for cardholders and merchants, because the greater the number of cardholders, the more attractive it will be for sellers of goods or services to accept the card as payment. In turn, the greater the number of merchants interested in accepting this payment system, the greater the number of consumers interested in becoming cardholders. This positive network externality should also be understood in terms of the number of transactions carried out through the platform. Certainly, if the number of transactions through the platform increases, each member of each group of economic agents will have a greater incentive to interact through the platform, since they are certain that it will be an accepted payment system (Rochet & Tirole, 2006a).

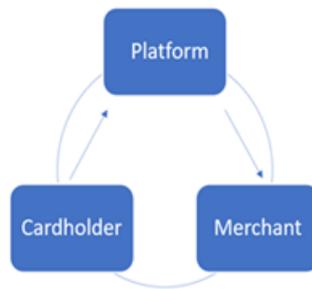
10. By using such a platform, each of the economic agents receives additional benefits, which renders such scheme as an attractive business model. These benefits are different from the network externalities mentioned above. For example, cardholders and merchants gain confidence in transactions and can reduce costs at the time of posting transactions, etc.

11. The following diagram shows the three-party scheme in credit card payment systems:

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<sup>2</sup> The “two-sidedness” is due to the platform acts as an intermediary of two interdependent groups of demands: Merchants and consumers.

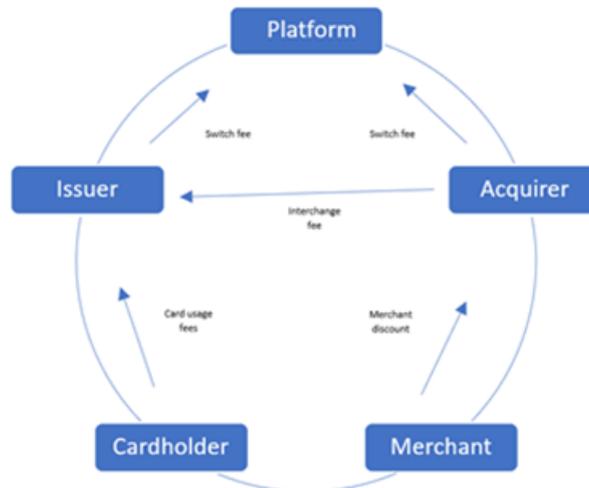
Figure 1. Three-party scheme



Source: Based on (Börestam and Schmiedel 2012)

12. The purpose of the diagram is to illustrate how the platform works, by showing that the cardholder uses it to pay the merchant in exchange for a product or service offered by the merchant. Nonetheless, in practice the payment system is usually more complex because the cardholder has his/her money or credit in a bank, and the merchant has a bank account linked to the collection of the funds generated in the transaction with the cardholder. The bank to which the cardholder's account or credit belongs is called issuer, and the bank to which the merchant's account belongs is called acquirer. In this case, the following more complex system shows the interaction of the abovementioned economic agents, also known as Four-party scheme (Rochet & Tirole, 2006a).

Figure 2. Four-party scheme



Source: Based on (Börestam and Schmiedel, 2012)

13. The arrows in Figure 2 depict the flow of the fees that are paid within the network. See how the issuer charges the cardholder a card usage fee that allows him/her to use the card as a means of payment and to access the network created by the platform. The acquirer charges the merchant a fraction of the value paid by the cardholder to allow him/her to belong to the network. In addition, both the issuer and the acquirer must pay fees to the platform in its capacity as the manager of the information flowing through the network (Prager et al 2009). This means that interchange fees act as a balancing mechanism so that some of the issuer's costs are covered by the acquirer. However, in some situations these

interchange fees may present an opposite flow, i.e., the issuer pays the acquirer (Börestam and Schmiedel, 2012).

14. All these rates do not depend exclusively on the marginal costs of production of goods or services and the elasticity of consumer demand since the network's externalities and market power must be accounted for<sup>3</sup>. In general, the benefits offered to consumers, the adoption costs of technologies, and the structure of the network are aspects that play a fundamental role in determining the rates involved throughout the network (McAndrews & Wang, 2006, 2012). For example, an increase in the fees paid by the merchant could, ideally, imply a decrease in the demand for card services by merchants and, through the positive network externality, generate a decrease in the demand for card services by cardholders, and therefore the prices set by the platform on each side should take these externalities into account.

15. A key concern regarding a two-sided market is the determination of the rates or prices paid by the economic agents using the platform. This set of prices is known as the price structure and depends, among other things, on the price elasticities demanded by each side of the market. Thus, the side whose demand elasticity is lower will pay a higher price. If the price elasticity of demand of merchants is lower, then they would be charged a higher price in the price structure, including situations in which the price on cardholders is negative. Therefore, in these market structures it is natural to find scenarios in which the standard conclusions for a one-sided market may differ, i.e., in a two-sided market we may find that the profit margin is not related to market power, that negative prices appear, or that more competition does not improve social welfare.

16. Furthermore, a question arises as to how to measure the efficiency of the price structure set in the market. In general, it is said that a pricing structure is efficient whenever it maximizes the aggregate benefit of all the agents involved in the platform scheme. However, prices charged by the card payment provider may differ from the socially optimum one, i.e., merchant and cardholder welfare is not maximized. In addition, the market power of providers on either or both sides of the market may enable them to extract rents, i.e., charge their customers more than the competitive price<sup>4</sup> (Börestam & Schmiedel, 2012). On the other hand, there is no theoretical consensus over the implications of the existence of market power or bargaining power on the part of issuers and acquirers on the determination of the exchange rate. Thus, in addition to the controversial point among academics on the measurement of welfare in two-sided markets, distortions derived from bargaining power must be added when evaluating the efficiency of exchange rates set in a particular market.

17. No consensus has been reached among academics and policy makers on the challenges posed by the determination of welfare measures and, therefore, on what would be an efficient pricing structure in a network such as the one presented (Chakravorti, 2010). As a result, the debate remains as to whether the rates charged are efficient and, moreover, whether the rate regulations (especially interchange fees) are relevant. The latter poses challenges to the regulators of these markets and to the competition agencies in carrying out their administrative actions.

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<sup>3</sup> Measuring market power in two-sided markets is a challenge for authorities. However, to calculate this market power in two-sided markets, it has been suggested to calculate the market power in each of the markets separately and then consider the effects of network externality, among others (Collyer *et al*, 2017).

<sup>4</sup> Market power is also determined by the barriers to entry or the bargaining power of the parties. For instance, switching costs in two-sided markets can create entry barriers which would allow the platform to consolidate its market power whenever there is a first-mover-advantage (Collyer *et al*, 2017).

### 3. The evolution of the payment sector and systems

18. Technological progress has enabled the transformation of payment systems, it has allowed for the emergence of new transactional methods and even new kinds of currencies. Technology is one of the drivers<sup>5</sup> of such changes, alongside the transition towards a global knowledge-intensive economy. In such context, an increasingly diversified society has stressed the importance of guaranteeing equitable access to these new payment systems. This has led to the emergence of new firms offering new payment systems. After all, technological progress is not an isolated phenomenon; rather, it runs along the ever-rising and most importantly innovation-driven global integration (Miller et al., 2002).

19. In this context, P2P payments (Peer-to-Peer/Person-to-Person) and mobile payments flourished as alternatives to credit/debit payment card structures. P2P payments have been a growing niche, with PayPal leading the way in its early days. Mobile payments have been equally successful, although in the beginning confronted the challenges associated with wireless end-to-end security infrastructure, a challenge that was subject to the technological generation of the time (Tumin, 2002). Likewise, in the middle of the first decade of the 21st century, there was a boom in B2C e-commerce with growth rates of over 25% per year. These dynamics made possible a greater participation of credit cards in e-commerce<sup>6</sup>, which have since faced the emergence of other electronic means of payment with potential substitution, such as debit cards, intermediary services (as in P2P mentioned above), mobile device payment systems and electronic currencies (OECD, 2006a).

20. In the early 21st century, the explosion in online payment systems reached the point where nearly a third of new payment schemes were attributable to transactions carried out on mobile platforms in OECD member countries (OECD, 2006a). These new dynamics were accompanied by heterogeneous adaptations and developments in these countries. For example, high dynamics were observed in Nordic countries, Australia, and New Zealand, in contrast to the low volume of online payments with high e-commerce growth in Japan and Germany. This is not different from the Latin America case, whose low dynamics is attributable to limited access to retail payment services and their high costs, that entails to low competition among financial institutions, which it related to a limited compatibility with different payment solutions. For instance, there is a set of factors that hampers the access to this new payment schemes, like low financial literacy, high informality, and low-income levels (Alfonso, Tombiniy, & Zampolli, 2020).

21. However, despite the above-mentioned take-off, the initial expectations resulting from the momentum coming from the Internet seemed to be higher than what was offered. This mismatch was due to barriers to B2C transactions, which were: i. difficulties associated with payments, ii. information asymmetries regarding sellers' reputation or product delivery, and iii. low initial consumer demand. These barriers were based on trust and security, which were relevant elements, given the existence of at least three key trends. The first, alludes to the change in the structure of production (output structure), in which the tertiary sector gained more and more weight compared to the primary and secondary sectors. The second trend

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<sup>5</sup> Another driver is the Government role, because financial inclusion allows to correct market failures, also it affects the long-term institution building. An equitable access to financial markets may be a government policy due to it allows agents to take advantage of business opportunities (Demirgüç-Kunt, Beck, and Honohan 2008).

<sup>6</sup> When it comes to e-commerce, the treatment of privacy is a complex issue, since some media demanded personal information to complete the transaction (Ackerman, 1999). However, as this issue has a bearing on the trust that a consumer has when making a transaction, companies have learned about this need, resulting in the search for methods to minimize the requirements for private consumer information, which would have the effect of increasing consumer trust (Van Dyke et al. 2007).

concerns globalization. Finally, the third trend refers to advances in information technologies, since these are determined by the generations of computers, telecommunications and associated products and services (OECD, 2006a; Goldfinger, 2002).

22. Such trends bolstered the paths of mobile and online payments and established the course these payments would take after the first decade of the 21st century. The result was the emergence of new uses and the digitization of payment systems, which not only were relevant for e-commerce, but also for traditional commerce. Even so, e-commerce was further consolidated, as well as online and mobile payment methods. Mobile payment methods include contactless payments and remote mobile payments via SMS or WAP (Wireless Application Protocols). Accordingly, new players entered the market as Payment Service Providers (PSP) facing traditional players such as banks, card networks and payment processors. These new competitors were named Alternative Payment Providers (APP), which were divided by virtue of their services into: (i) online payment services, such as Amazon Payments, Google Checkout, etc.; and (ii) Mobile Network Operators (MNOs) under their own business models. Interactions with APPs led to lower costs for merchants, increased security and portability, new alternatives for obtaining money, among other aspects (OECD, 2012; Autorité de la concurrence, 2021)<sup>7</sup>.

23. All the above brought about a constant change in market dynamics, manifested in two main elements: (i) the entry of new operators into the sector and (ii) the adaptation of groups of financial institutions to the new reality. In relation to the first, it has been observed how these APPs are now known as FinTech's and Biotech's, among which Amazon, Google, Apple, and Facebook stand out. Regarding the latter, traditional financial institutions have been forced to enter into cooperation or partnership agreements with APPs and carry out R&D (Research and Development) investment projects. As a result, an equity investment in FinTech has been observed, as well as the conclusion of agreements in which the following services have been proposed: secure payment solutions, payment platforms, payment infrastructure for e-commerce, development of APIs (Application Programming Interface), P2P money transfer, etc. (Autorité de la concurrence, 2021).

24. Now, even though the evolution has shown a trajectory marked by trends, there are other underlying aspects associated with the characteristics of the new payment systems, that allow us to understand why the changes are so robust. First, payment systems are of relevance because they reduce the cost of money in terms of clearing and settlement, as well as in terms of fraud and risk. Second, they also reduce exposure, risk, and cost in paper instruments, without neglecting the convenience, comfort, and security they provide. Finally, they tend to generate transactions in less time, such as digital bearer settlements (Tumin, 2002). New payment systems are therefore relevant not because of themselves, but because of the elements of the system and the resulting interactions. For example, payment cards aren't relevant because of the technology itself, but because they reduce transaction costs, promote brand building and foster customer loyalty. This can also be illustrated by the case of retail payment systems (leading edge change), because, recognizing that retailers must assume the payment card fees (price pressure) and the aggressive competition in the market, they take advantage of new technologies for payment systems with lower costs (Tumin, 2002)<sup>8</sup>.

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<sup>7</sup> For instance, *Telerecargas* is a financial service that allows people from Argentina to make electronic purchases through online transactions without a bank. In Brazil, *Moneyclip* enables to access to e-transfer and card services without the need of using a bank account (Mancini, 2016).

<sup>8</sup> The new payment systems are also relevant to tax collection. The increasing online sales have modified the role of digital platforms as tools for the collection of VAT/GST of these sales (OECD, 2019).

25. In addition, according to the nature of the instrument, payment systems can be divided into two: (i) account-based systems, such as payment cards, mobile payments, and telephone accounting systems; and (ii) electronic currency systems, such as smart card systems and online payment systems. Some online payment options are: Mediating services (such as PayPal), Automated mechanisms for bill payments, online wallets, Electronic Currency Systems, and Online banking-based internet payments. According to the OECD, the most modern payment systems are structured on the following pillars: applicability, availability, reliability and convenience, cost, security, accountability, and anonymity (OECD, 2006a; OECD, 2012a).

26. Under the abovementioned circumstances, one would find a payment industry with network effects whose online nature has added further complexity to the two-sided market discussed in the previous section. On the one hand, the stakeholders are not only limited to banks, card companies, providers, and new financial services players, but also trade associations, standard-setting organizations, and governments (governments, standard-setting organizations, and industry co-ordination groups). Likewise, financial services have been unbundled in the industry, which has led to the creation of intermediaries responsible not only for payment authorization, but also for record-keeping, billing, the platform on which the payment is carried out, and even for pricing. In addition, new institutions have gained participation in intermediation without being financial institutions themselves (OECD, 2006a).

27. New roles and trends have emerged within the industry. For example, banks, as financial institutions, have employed ICT (Information and Communication Technology) and the Internet for the development of online banking services without disregarding in-store payments. Other examples are the role of new institutions (such as APPs), which have been behind the most innovative payment solutions, generating network effects in this type of markets. In this sense, the new institutions have gained participation in the financial intermediation activity, even though they are not institutions of this nature, which in turn has created spaces for both rivalry and cooperation between institutions (OECD, 2006a).

28. This poses a series of challenges facing the development of the new markets, both from the supply and demand sides. On the supply side: (i) PSPs and APPs are subject to established networks, which is why there are network effects; (ii) the long-term infrastructure required for the development of these systems calls for high investments, which causes positive network effects on users' mobility, because they only shift to another new services if other users do so; (iii) method interoperability and standardization allow high levels of deployment, but in turn, these two elements require coordination; and, (iv) the development of new payment systems and the entry of new institutions impose challenges on regulatory authorities (OECD, 2006a).

29. On the demand side, however, the following challenges stand out: (i) Consumers may be affected by a limited supply of online products because merchants could concern about liability, reliability and cost from certain payment means; and (ii) the need for elements such as security, trust and payment alternatives, aspects that determine the consumer's choice of means of payment (OECD, 2006a; Tumin, 2002).

30. This imposes challenges in the way regulatory and competition authorities intervene. For example, the existence of APPs whose non-financial nature does not prevent them from competing in the same market with PSPs (OECD, 2006a). In addition, new services have emerged in the financial industry outside the scope of what the authorities have conventionally regulated, which is why the regulator has promoted scenarios aimed at recognizing the new market dynamics. Two relevant examples are regulatory sandboxes and beaches, scenarios for regulatory testing that enable the evaluation of the performance of innovations by competition and regulatory authorities, such as FinTechs applied to

payment systems, digital currencies, and financial and investment platforms (Allen, 2019). The way the financial sector has evolved has attracted the attention of the competition authorities, it has motivated the preparation of market studies<sup>9</sup> that have allowed the identification of important conditions of market structures within the industry and issues, and also has led to the formulation of some conclusions and recommendations<sup>10</sup>.

31. In short, technological progress and payment systems cannot be analysed independently. Nor is it correct to approach payment systems as an element isolated from social and economic phenomena since these determine the success of transitions to new environments in which payment systems operate. Outside these elements, the authorities face challenges inherent to the market assessment, which are likely to translate into structural discussions on the frameworks already in place, whether legal, economic, or social<sup>11</sup>.

#### 4. Competition and card payment systems

32. The previous section concluded by suggesting a comprehensive analysis of payment systems, allowing for the recognition its constituting parts, its effects on the network, (emerging or not from these systems) and the identification of the potential inefficiencies that can arise. These inefficiencies, known as market failures, have been addressed by competition and regulatory authorities. About the form of intervention, experiences have left some lessons to be learned, but also have posed new challenges with some further questions. Thus, this section discusses the main issues and some of the

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<sup>9</sup> The OECD has already recognized in its 2015 report on "Competition and Market Studies in Latin America" that, through market studies, competition authorities can contribute to making markets work better, particularly when obstacles and distortions to competition are not caused by infringements of competition laws. Competition authorities often use this tool to monitor markets and inform governments about identified problems and recommend areas for improvement. Or also, as a tool to prioritize competition advocacy activities and even enforcement activities.

<sup>10</sup> The Colombian case stands out, since the Superintendence of Industry and Commerce made a series of reports addressed to the Congress of the Republic on the use of debit and credit cards in commercial activities, and through which it managed to identify market participants, the financial coverage at the regional level, levels of usage and the main credit products in the country. For more information: <https://www.sic.gov.co/estudios-remitidos-al-congreso-de-la-republica>.

<sup>11</sup> Financial inclusion remains a critical challenge in the Latin American and Caribbean region to reduce poverty and achieve more inclusive economic growth. According to data from the Findex Survey, in 2017 only 54% of the adult population of the region had access to a bank account (World Bank, 2017), which represent a great opportunity for the Fintech sector given its ability to bring financial services through technology to a part of the population that until now has not been adequately served by traditional financial services and that can contribute to formality and usage processes.

The results obtained in the survey carried out on Fintech enterprises for the Latin America Report 2018 are a great sample of said opportunity: growth and consolidation with the support of the Inter-American Development Bank (IDB). When asked about the main market to which they direct their product or service, 46% of the startups affirmed that they direct their solutions to the consumer market and underbanked or unbanked SMEs. Specifically, 19% is aimed at underbanked or unbanked SMEs, while the remaining 27% is aimed at underbanked or unbanked consumers.

In Colombia, at the end of 2019, eight million Colombians were using more or less eleven platforms offered by banks and financial or fintech enterprises to carry out transactions. The main advantage was how easy it was to get one, without the paperwork of banks and a minimal cost of usage. Added to a language easy to understand for the user and that lays down a comprehensive explanation of the functionalities of the application. Among those with the largest number of users were Nequi, Daviplata, PayPal, BBVA wallet and Mercado Pago.

examples of those interventions, a discussion divided into two parts: first, on the measures used in the competition arena, and second, on the measures used in the regulatory arena.

#### 4.1. Competition

33. Technological progress has facilitated the emergence of non-cash payment systems. This has enabled transactions that otherwise would not exist, offering an advantage, but with an implicit cost: since consumers are free to choose the most convenient payment system, they tend to choose those that represent a higher cost for merchants<sup>12</sup>. This means that merchants face relatively higher costs than the perceived benefits of the purchase, and since they cannot transfer this cost to the price borne by consumers, an inefficiency is generated; a market failure (OECD, 2006b; OECD, 2012b).

34. In addition, there are certain card network rules that lead to price discrimination, which translates into greater bargaining power on the side of card networks with respect to merchants, whose types of margins influence the charges imposed (e.g., hotels have a higher margin than supermarkets). These rules limit the bargaining power of merchants, which, together with the impossibility of passing this cost on to the consumer, may lead to distortions in the market (OECD, 2006b).

35. The first of these rules is known as honour-all-cards, which imposes the obligation that any card of a given brand must be accepted by the merchant if at least one card of that brand was previously accepted. The second rule is the no-steering rule, which prevents merchants from expressing a preference to choose one form of payment over another to opt for the one with the lowest merchant fee. The third rule is the no-surcharge rule, which does not allow merchants to charge higher prices to consumers with a certain payment method. The fourth rule is known as the no-discount rule, which prohibits merchants from discounting based on the consumer's payment method. It is important to mention that, although the above rules have been considered as restrictions to the behaviour of market participants, eliminating them may lead to undesirable consequences (OECD, 2006b; OECD, 2012b).

36. These rules may also have a distributional effect as well since they proportionately higher impact on low-income households. On average, consumers with less expensive payment mechanisms have lower incomes than those with more expensive payment mechanisms<sup>13</sup> and, still, the former pay a higher relative price than the latter. This happens because the use of more costly payment mechanisms is not transferred to the price paid by the consumer, so that users of these mechanisms pay a lower price than they would have to pay if this cost were transferred. This is assumed by the users of less costly payment mechanisms, so it can be understood as a "subsidy" that goes against an adequate distribution of income (OECD, 2006b).

37. This "subsidy" in card payments employs the interchange fee as a mean of payment, which encourages credit users to use them over other alternatives, i.e., substituting cash, checks or debit cards. This market failure is founded on the free choice of the cardholder to opt for the payment mechanism of his/her preference, which puts him/her at an advantage

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<sup>12</sup> Consumers may be more likely to choose the payment cards offering more rewards, which are more expensive for merchants. This produces upward pressure on merchant costs, because merchant's fee depends on the interchange fee, which is set by the card association and explains the aforementioned rewards (Rysman, 2009).

<sup>13</sup> A study from Colombia suggested that if a household belongs to the highest wealth quintile, this condition increases the probability of being a credit user. The authors found that more than 75% of the credit cardholders belong to the highest income quintile (Murcia Pabón, 2007).

over the merchant who, due to the no-steering rule, no-surcharge rule, and no-discount rule, cannot refuse to receive such payment mechanism.

38. Based on the above, structural solutions with long-term effects would be most appropriate to solve these market failures. These solutions could be based on technological changes, bringing not only new interactions between the parties to the payment systems, but also new products, either from APPs or traditional PSPs. These structural solutions impose additional challenges that might involve the establishment of new rules of the game within the market. Some of these challenges may be the limits to the types of joint venture agreements or any other type of negotiating venture that APPs may have with traditional PSPs, as well as whether the incentives of APPs are like those presented by traditional PSPs (OECD, 2006b).

39. Finally, it is worth noting that the work of the competition authorities should not be the same as that of the regulatory authorities. This is because their mechanisms of action are based on competition enforcement and competition advocacy, which are the two issues discussed below. Thus, intervening such market failures should not always be through the regulation of the interchange fee in the case of card payments, since restrictions or settings in their value, as in any other charge, would imply dealing with pricing cases, which may be closer to measures of a regulatory nature. This having been said, this section will cover anticompetitive agreements in two sets of cases: the former is related to competition enforcement, and the latter is linked to competition advocacy.

#### ***4.1.1. Enforcement***

40. Due to the existence of anticompetitive agreements or behaviours that have a direct impact on consumers, competition authorities have resorted to competition enforcement to detect, control, and deter these practices. For this to be achieved, the authorities require a definition of the relevant market affected, task which entails the determination of the characteristics of the industry. However, the market definition in payment systems brings a great challenge, since it has sectors that have multiple markets with multi-sided platforms, which in turn revolves in anticompetitive behaviours and agreements that have a different impact than those of a one-sided market, due to the existence of connections between both sides of the market (OECD, 2012b).

41. Thus, this section will discuss some cases associated with competition enforcement in payment systems. In this discussion, the challenges, and forms of intervention by the authorities are addressed.

#### ***Enforcement approaches to anticompetitive agreements on the interchange fee***

42. The role and the importance of the Multilateral Interchange Fee (MIF) (essentially, a collective agreement on price (OECD, 2006b)) is under debate by the authorities. Some authorities have established that setting MIFs for four-member payment systems could violate competition law. Nevertheless, the experience has shown that MIFs are more likely to be used if exist some issues in the payment system, as a barrier to the issuing of new cards or payment system. Hence it is not a consensus about the goodness of the MIF in a payment system. With this said, in this section we discuss two cases that revolve around MIFs, also referred to as IPF (Interbank Payment Fee).

### Case 1. Hungary

43. This case was brought by the Hungarian Competition Authority (GVH), against Visa, MasterCard International and seven banks. The problem identified by the GVH was a distortion of competition amongst acquirers and payment card schemes, in which the level of merchant service charges was affected. This distortion was due to an anti-competitive practice on the part of the banks, which uniformly agreed on an Interchange Fee level, facilitated by Visa and MasterCard International, which were involved in the agreement that violated the Competition Act.

44. The authority in question investigated and imposed fines of more than USD 3.18 million on VISA, MASTERCARD and seven Hungarian Financial Institutions. As a result, the practice was effectively put to a halt and, as of July 30, 2008, the level of Interchange Fees was different from the level set out in the agreement. The timely intervention of the authority contributed to the development of the market (Gazdasági Versenyhivatal, 2009).

### Case 2. France

45. To reduce a major share of the IBF (Inter-Bank Fee) for "CB" payment card transactions, the Autorité de la Concurrence decided to enforce the commitments of the procedure negotiated with the Groupement des Cartes Bancaires (GIE CB), under which the members of the group in question, which is composed of the main banks in France, were bound. As the joint establishment of IBFs by the Groupement des Cartes Bancaires could have anti-competitive effects, the above-mentioned authority decided to assess in 2010 whether the fees charged on check transactions may or may not be justified. However, at the end of the assessment, the authority found no justification for the fees charged during the transition to dematerialized check processing and imposed multiple fines on different financial institutions amounting to 384.9 million euros (Autorité de la Concurrence, 2011).

### Case 3. Colombia

46. Parties in this case include the Asociación Bancaria y de Entidades Financieras de Colombia, Asobancaria (Asociación Gremial de Instituciones Financieras) -Credibanco-, Redeban Multicolor S.A. and the banks that serve on the Visa and MasterCard Interbank Interchange Fee (IIF) Committees. The problem identified was related to the joint fixing of the Interbank Interchange Fee (IIF) (the interchange fee in the Colombian case) by the Visa and MasterCard committees. The agreements reached between these committees entailed an anti-competitive conduct, since such fees must be regulated by the competent authority. In consequence, an investigation was launched under Resolution 26255 of 2011 by the Superintendence of Industry and Commerce, with the objective of determining the existence of an agreed IIF between the banks (Superintendence of Industry and Commerce, 2011).

47. The investigated parties presented a guarantee to suspend and modify any conduct that originated the investigation in the Superintendence of Industry and Commerce (SIC) of Colombia and committed to participate and implement a system that could determine interbank interchange fees (IIF), known as the REMI model, as a model that wouldn't violate free competition. This system is a mechanism of remuneration of the issuing bank that works as a vote among credit establishments and consists of the calculation of the IIF for each segment in terms of the median, whose set of rates is fed by the proposals made by the credit establishments (Superintendence of Industry and Commerce, 2012). The investigation was closed early afterwards under Resolution 40478 of 2012.

*Restraints to competition in the Market for General Purpose - Card Network and Services (Exclusivity Agreements)*

48. The existence of card network rules was previously discussed. In the following section we will address another type of rules called exclusionary rules, which are limitations or prohibitions on banks in the issuance of cards that do not belong to certain brands. This practice limits the offer of some branded cards, in addition to restricting access to the possibilities that cardholders may have when selecting them. This may lead to market inefficiencies, besides having a direct impact on the final consumer, who is subject to the dominant card networks, and merchants are also limited by the existence of other card network rules that prevent them from having bargaining power.

#### Case 4. United States

49. General-purpose cards Visa and MasterCard, the largest in the U.S. market, with a combined market share of over 75%, resorted to an anti-competitive practice in which, taking advantage of their position, imposed rules and policies that prohibited their member banks from entering into agreements with other card networks, such as American Express and Discover/Novus. This anti-competitive practice consisted of the restriction of bargaining power of the member banks of the Visa and MasterCard card networks, among which they could share member banks. As a result, smaller card networks were affected, as the exclusionary rules restricted competition, which did not allow American Express and Discover/Novus to partner banks. The anticompetitive conduct was sued in the U.S. District Court for the Southern District of New York as a result. One of the contributions of this case was the creation of a precedent against exclusionary rules (U.S. Department of Justice, 1998).

#### Case 5. Brazil

50. In terms of antitrust practices in the market of payment instruments, six of CADE's proceedings related to exclusivity agreements. From a total of 14 investigations of anticompetitive conduct between 1995 and 2019, around 43% (six cases) concerned this type of restrictive practice. One of these cases are following in the next paragraphs.

51. In 2007, the meal voucher firm Sodexo made a complaint to the former Secretariat of Economic Law (SDE), which led to an investigation into claims of exclusivity agreements. Following the establishment of firm Companhia Brasileira de Soluções e Serviços (CBSS) in 2004, and after Administrative Proceedings No. 08012.002096/2007-06 were launched in 2007, Sodexo claimed that the defendants at issue made tie-in deals and operated exclusively with one another. The basis for the complaint was that from 2006 to 2008 the bank Nossa Caixa (part of the joint venture CBSS) only issued vouchers of the card brand Visa Vale. In the hearing of the case, however, the rapporteur understood that there was no evidence that the exclusivity held by Nossa Caixa could harm competition, considering the low market share of the bank. Additionally, concerning tie-in sales, the rapporteur applied the *in dubio pro reo* principle; consequently, the case was dismissed in 2015.

52. Until 2010, the exclusivity relationship between acquiring banks and card associations defined the dynamics of the payment instrument industry. Thus, in line with the competition issues of this market listed on a release by the Central Bank of Brazil, two other investigations were launched by the SDE in 2009. The first one, Administrative Proceedings No. 08012.004089/2009-01, regarded a possible abuse of economic power by acquirer Redecard (currently named Rede), which imposed several contractual obligations on its payment facilitators. Amongst the obligations, transactions made via payment facilitators should be necessarily settled through the Redecard system. Besides, facilitators should provide sensitive information about their customers to Redecard. Due to the

potential harms the obligations could cause to payment facilitators, the SDE imposed a provisional remedy on Redecard, prohibiting the acquirer from continuing such practices. Although Redecard lodged an appeal with CADE, the antitrust agency decided to uphold the provisional remedy in its entirety.

53. Later, in 2014, Redecard signed a Cease-and-Desist Agreement with CADE, committing not to repeat practices potentially harmful to competition, and paid a total amount of BRL 7.45 million as financial contribution.

#### *Issues concerning merchant discount rates*

54. In this section we will present cases concerning competition issues when setting a merchant discount rate and in the rule establishment that affects the strategies of the firms, also they are related to the incentives and the promotion of competition between payment card systems, and their link with the technology and the innovation. It is worth noting that the latter pair might be a structural solution to market failures in payment system, since it entails the technological change, the arrival of new products and market dynamics. Nevertheless, this involves new challenges to both the competition and regulation authorities because incentives to payment ventures, acquisition joint ventures or other negotiating ventures could emerge.

#### Case 6. United States

55. Parties in this case is Visa as the main character seeks to buy Plaid, a financial technological firm that represents a threat to the monopoly of Visa which controlled approximately 70% of the online debit transactions in 2019, whose monopoly power is supported by barriers to entry and expansion. The reason of the threat is because Plaid is a nascent competitor has developed new solutions that could substitute the online debit services offered by Visa. Hence, Visa agreed to acquire Plaid to protect its monopoly offering USD 5.3 billion on January 13, 2020.

56. However, this acquisition affected the competition, depriving the two groups of demand of lower cost for online debit transaction and with more alternatives to monopoly prices set by Visa. Therefore, the Supreme Court indicates that this proposed acquisition violated Section 7 of the Clayton Act and the Section 2 of the Sherman Act. The identified anticompetitive effects from this acquisition are as follows:

- It would result in higher prices for online debit transactions.
- It would result in less innovation and reduce quality, service, and choice.
- It would raise entry barriers.
- It eliminates the nascent competition between the implied parties.

57. For the reasons outlined above, the United States requested:

- That acquisition be adjudged to violate both the Section 2 of the Sherman Act and the Section 7 of the Clayton Act.
- That Defendants (Visa and Plaid) be restrained from carrying out the acquisition or another transaction entails a combination of these two firms.
- “(...) That United States be awarded costs of this action (...)” (U.S. Department of Justice, 2020)

### Case 7. Brazil

58. This a Cartel Case. Two of CADE<sup>14</sup>'s proceedings looked into cartels in the industry of payment instruments. The first of them, Administrative Proceeding No. 08012.006242/1997-68, was brought to investigate allegations of collusion and an unjustified raise in merchant discount rate on the part of ABECs, Amex, Redecard (currently named Rede), and Visanet (currently named Visa). In addition to an alleged cartel, CADE also scrutinised signs of abuses in POS rentals and the excessively delayed transfer of credit card payments to merchants. However, as the claims lacked evidence, the case was dismissed in 2007.

59. The second case was Administrative Enquiry No. 08700.009515/2014-01, which concerned a concerted practice involving the Supermarket Association of the State of Espírito Santo (ACAPS) that allegedly promoted a mass boycott against the meal voucher of the card brand Alelo. According to the investigation, the behaviour started from ACAPS' publication of a note announcing supermarkets in the state of Espírito Santo were terminating their agreements with Alelo.

60. In summary, ACAPS claimed the mass termination happened in response to the high rates charged by Alelo, in addition to the difficulties in renegotiating those rates with the company. Additionally, the association argued these negotiations were carried out between individual supermarkets and Alelo. The card brand, for its part, declared ACAPS brought together most of the supermarkets of the State of Espírito Santo and instructed its members not to negotiate with the brand individually.

61. Thus, the boycott introduced by ACAPS was a response to Alelo's refusal to negotiate collectively. The enquiry led to ACAPS signing a Cease-and-Desist Agreement with CADE, and since the agreement was fulfilled successfully, the proceedings were subsequently dismissed.

### Case 8. Brazil

62. Administrative Enquiry No. 08700.001860/2016-51 examined agreements signed between acquirers and commercial establishments. Through them, acquiring banks committed to reduce their merchant discount rates, whilst the merchant committed to have a certain monthly volume of sales. Hence, to be charged a smaller MDR (Merchant Discount Rate), merchants had the incentive to have the most transactions possible through that acquirer. As for the acquirers, although collecting less money per transaction, they gained customers, thus offsetting their losses with the reduced MDR with a growth in sales volume.

63. Nevertheless, according to small acquirers, these agreements were being used by Cielo and Rede to build loyalty amongst commercial establishments, as these acquirers dealt exclusively with certain card associations (card associations Elo, Alelo, and Amex only worked with acquirer Cielo, whilst Hipercard, with Rede). Considering all practices taking place in this industry, these agreements ended up increasing and extending the acquirers' market power even more.

64. By themselves, the agreements raise no competition concerns. However, they imposed high termination costs, which perpetuated the relationship between market-leading acquirers and merchants, lessening competition in the acquiring market. The following are some of the clauses that increased termination costs for merchants:

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<sup>14</sup> Conselho Administrativo de Defesa Econômica.

- Automatic renewal clause: it establishes that, in exchange for renewing the agreement, the merchant is not charged a termination fee, even if they failed to have the stipulated monthly sales volume. As the clause also provided for retroactive fines for failing to achieve the sales volume, it induced automatic renewal.
- Termination of the agreement: regardless of reaching the sales volume required, the merchant would be levied a fine whenever they terminated the agreement.
- Generic clauses: generic clauses imposing additional fines were also added to these agreements, and the amount and method to calculate these fines were unclear.

65. CADE does not deem incentive agreements a per se competition concern, as they are intended to increase companies' customer network by offering discounts and other benefits to these customers. Nonetheless, these agreements cannot be used to restrict competition, and the payment instrument industry is not following this direction. The incentive agreements were being executed in an environment where acquirers and card associations were only doing business within their business groups. This exclusivity relation would make merchants dependent on the acquirers, further increasing acquirers' market power as to the disproportionate conditions of these agreements.

66. Also, within the context of this investigation, CADE noticed some banks were offering rebates on MDRs if customers-maintained exclusivity agreements with acquirers and, at the same time, moved their accounts to these acquirers' financial institutions. Although the rebates by itself could not be considered harmful to competition, as it would benefit merchants, it was being given in a discriminate manner. Merchants would only receive rebates if their acquirer belonged to the same business group as the financial institution where the merchant had its account. Hence, intragroup crossed subsidies hampered the competition between incumbents and independent acquirers, as even if the latter operated as efficiently as the former, they could not offer customers the same benefit.

67. The existence of incentive agreements in this market was the last practice investigated in Administrative Enquiry No. 08700.001860/2016-51, which was launched based on what has been found in Preliminary Enquiry No. 08700.000018/2015-11. Therefore, with the refusal to read schedules of accounts receivable, the attempt to maintain acquiring customers' accounts within their own financial institutions, the retaliation practices, the tie-in arrangements, the discriminatory rebates in charging MDRs, and the incentive agreements, said Administrative Enquiry resulted in the execution of four Cease and Desist Agreements to cease all antitrust practices.

#### ***4.1.2. Advocacy initiatives***

68. Advocacy is a mechanism used by the authority to promote competition. Specifically, advocacy encompasses tasks such as the review of regulatory projects aimed at promoting competition or identifying regulatory failures that negatively impact competition. In the case of low value means of payment<sup>15</sup>, the competition authorities have faced different challenges in terms of advocacy, among which the following stand out: the review of draft regulations on interchange fees, vertical integration, or the introduction of new technologies.

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<sup>15</sup> Low-value means of payment are the means used to carry out low-value transactions and payments between people and businesses. These means are essential for the proper functioning of the financial sector and the economy.

*Regulatory measures regarding interchange rate-setting*

69. In cases where there is no violation of competition law, the competition authority usually focuses its efforts on ensuring that regulatory measures effectively promote competition. Among the alternatives available to the authority from its advocacy functions is the suggestion of regulatory changes that reduce the bargaining power of some of the parties. For example, greater transparency can be ensured in the information on the rates agreed in other negotiations, since symmetry in the information can reduce the bargaining power of the agents.

70. A second measure that some competition authorities have decided to implement is to recommend the introduction of a regulatory measure on the interchange fee. Certainly, this measure would eliminate the market power of issuers or acquirers when determining the interchange fee. However, the main complication in this alternative is transferred to the regulatory authority, since this institution must choose the appropriate interchange fee level that corrects the existing problem without negatively affecting the performance of the payment scheme.

## Case 9. Argentina

71. In August 2016, the National Commission for the Defense of Competition (CNDC) in Argentina identified that PRISMA MEDIOS DE PAGO S.A had a dominant position in the acquiring markets (Commission Nacional de Defensa de la Competencia, 2016). The main recommendations of this authority were: (1) establish the necessary regulatory conditions to ensure that an entrant can have access to the acquiring market, (2) guarantee non-discriminatory treatment by the dominant firm for new entrants, (3) reduce entry barriers to alternative electronic means of payment, (4) regulate the interchange fee taking as a basis the best international experience, and (5) establish mechanisms to ensure transparency of financial costs in financing operations through credit card.

## Case 10. Colombia

72. In August 2020 the Superintendence of Industry and Commerce (SIC) issued an opinion on the bill on the low-value payment systems in Colombia (Superintendencia de Industria y Comercio, 2020). The authority highlighted, regarding the determination of the interchange fee, that: (1) The creation of a committee for setting the interchange fee, which was the mechanism suggested by the bill, may potentially facilitate collusion among the members of such committee and (2) this mechanism wouldn't be enough to tackle a scenario of an excessive rise of the fixed interchange fee, which meant that the regulation could have the potential of allowing infringements against the welfare of cardholders and merchants.

## Case 11. Colombia

73. Proposed regulatory draft: the draft regulation seeks to modify Decree 2555 of 2010 regarding low value payment systems.

74. The Superintendence of Industry and Commerce (SIC) analysed the following elements from the perspective of free economic competition: (i) operation of the Low Value Payment System (LVPS) based on the regulatory proposal, (ii) operation of the LVPS as a two-sided market, (iii) conditions for participants that exercise the acquiring activity, (iv) requirements for companies not supervised by the Superintendence of Financial Institutions that participate in the LVPS, (v) restriction to the Low Value Payment System Management Companies to exercise the acquiring activity, (vi) setting of the exchange rate in the LVPS, (vii) the disclosure of sensitive information of the agents participating in the system, (viii) the risk of materialization of possible individual anti-competitive practices such as tied

sales or exclusivity in contractual matters in the LVPS ecosystem and (ix) the authorization to credit institutions, financial services companies, capitalization companies and companies specialized in electronic deposits and payments on the control of the Low Value Payment System Management Companies.

75. The Colombian Competition Authority recommended:

- a) Establish explicitly in the regulatory proposal if the entities supervised by the Superintendence of Financial Institutions, to exercise the activity of acquisition, must comply with additional or different conditions to those required by Law for their incorporation, and in case of being affirmative, draft these requirements explicitly in the Project.
- b) Evaluate the restrictive potential of the requirements imposed on companies not supervised by the Superintendence of Financial Institutions to engage in the acquiring activity and implement complementary alternatives that allow the participation of this potential universe of excluded agents.
- c) Include in the regulatory proposal some mechanism, such as those referred to in numeral 4.6.1, that prevents an excessive upward variation of the interchange fee that could potentially have a harmful effect on the costs paid in the system and thus on the welfare of consumers and businesses.
- d) Eliminate the figure of the committees for the determination of the interchange fee in the scheme proposed in the Project.
- e) Evaluate the possibility of including in the regulatory draft an explicit restriction to prevent franchises from conditioning access to the payment system to the acceptance of all their product or service offerings.
- f) Review the option of setting a limit to the shareholding that credit institutions, financial services companies, capitalization companies and companies specialized in electronic deposits and payments may have in the Low Value Payment System Management Companies.

### *Challenges with vertical integration*

76. A major challenge for the competition authority arises from acquisitions and joint ventures in the payments system: to find the boundary between the efficiencies and potential limitations to competition that are generated by mergers or joint ventures within the payment systems, especially between incumbents and new entrants. As regards to vertical integrations, some authorities have suggested or recommended regulations requiring the separation of the owners of the network from the issuers or acquirers, due to the possibility of creating a discriminatory environment for other competitors to favour the companies linked to the network administrator (See Box Case 12). These discriminations could occur in terms of switch fees, access rates or response times and information flow.

77. Similarly, there are cases in which agents have been created to facilitate the technological infrastructure of payment services in which traditional banks are shareholders (See Box Case 12). Although these agents would allow the insertion of new technologies that would dynamize the sector by enabling it to meet the technical requirements for carrying out transactions, the fact that banks are shareholders of this agent created to facilitate the technological infrastructure could be seen as a factor restricting competition, because (1) this agent not only responds to its own economic interests, but also to the interests of its shareholders, which is why, for example, it could become an instrument to limit or hinder access to the payment system by competitors of the banks in

the acquiring process, and (2) the activity of this new economic agent may favour coordination among banks in setting the rates charged.

#### Case 12. México

78. In December 2020, the Federal Economic Competition Commission of México (COFECE) issued a preliminary opinion on clearing houses for card payments (Comisión Federal de Competencia Económica, 2020). Its main conclusions were:

(1) To eliminate the co-ownership of shareholder banks in clearing houses because this would give them access to sensitive information of competitors. Specifically, to eliminate these barriers to entry, the Commission proposed to divest 51% of the banks' shares in the clearing houses (E-Global and Prosa).

(2) To recommend that Banco de México and the National Banking and Securities Commission remove the regulatory obstacles detected to promote effective conditions for competition, which would be expected to contribute to greater banking penetration, financial inclusion, and formality in the economy.

#### *Ensuring regulation does not prevent the emergence of new technologies and emerging economic agents*

79. Technological change has created multiple scenarios in which financial or non-financial entities create alternatives to the payment schemes that operate across the financial system. These circumstances place the Competition Authority in a challenging context since these alternative payment systems may avoid some financial regulations. This is where the objectives of financial regulation must be weighed against the existing incentives for innovation in the sector. Specifically: consumers' rights should be safeguarded (security of personal data or transactions, among others) and, at the same time, innovation should be allowed because the existing regulation in a market can be seen as a barrier to entry with requirements that would eliminate the financial viability of innovation projects.

#### Case 13. México

80. In October 2017, the Federal Economic Competition Commission - COFECE - issued an opinion on a bill that aimed to "regulate financial services provided by financial technology institutions, as well as their organization, operation and functioning, and financial services subject to any special regulations that are offered or performed by innovative means" (Comisión Federal de Competencia Económica, 2017).

81. In today's environment characterized by constant innovation in the financial sector, companies must have an adequate legal framework to develop, adopt and use technologies, infrastructure, and business models, and to compete in the marketplace. If regulation limits the use of these elements, it risks eliminating competition in innovation, with important consequences on the variety, quality, and price of services and on consumer welfare. However, if regulation facilitates contact between competitors or, even worse, encourages them, it can negatively influence markets and lead to anti-competitive behaviours that could translate into higher prices, among others.

82. COFECE recommended adjusting the initial draft to enhance competition and innovation in the financial services market. The recommendations sought for the Fintech Law to establish with greater clarity and precision the principles of equality and non-discrimination between traditional banking and the new modality proposed in the regulatory project to allow the effective entry of new competitors into the financial market. The main recommendations were: (1) the establishment of rules to clarify ownership and

access to data, (2) guaranteeing non-discrimination by larger financial institutions towards FinTech's and (3) eliminating restrictive or technological infrastructure that prevent the entry of participants, among others.

#### Case 14. Chile

83. In November 2020 the National Economic Prosecutor's Office (FNE) submitted to the Chilean Court for the Defense of Free Competition some proposals to foster competition in the payment card industry (Fiscalía Nacional Económica, 2020). Some of the proposals were: (1) to establish the obligation on card companies (such as VISA or MASTERCARD) to have public, objective and non-discriminatory conditions when evaluating acquirer's licensing applications and (2) to prohibit brands from requiring companies interested in entering the acquiring segment to also develop the card issuing line of business. Both measures are aimed at eliminating barriers to entry.

#### *Alternative regulatory measures to promote competition in payment services*

84. The regulatory agencies have the task of introducing changes in the rules that govern the commercial relationship between agents with the aim of correcting potential economic inefficiencies. Agencies regulating payment systems face the permanent dilemma of regulating or not regulating, given that technological innovation increases competition in the payments sector, but regulation might not encourage innovation in exchange for generating an environment conducive to the infringement of consumers' and merchants' rights. For example, excessive regulation of mobile or electronic means of payment, in addition to limiting the expansion and growth of new means of payment, could also limit the growth of traditional card payment systems (OECD, 2012b). Therefore, the authority should always consider other alternatives to regulation since this correction mechanism may have greater detriments than benefits.

85. One of the main elements that are usually subject to regulation are the fees that are charged within the payment system. The usual challenges for the authority when regulating fees are: i) to set the limits of the regulation, ii) to ensure the proportionality or intensity of the regulation, since different means of payment operate simultaneously and, finally, iii) to determine the appropriate level of the fee to be regulated (OECD, 2012b).

86. To promote greater competition in the markets, the regulatory authority may introduce alternative measures other than regulating the level of fees charged in a payment system. For example, this authority may limit the flow of information from the merchant establishment to the acquirer to protect the negotiation of the merchant establishment or it may prohibit the use of clauses that prohibit these merchant establishment from offering differentiated prices that depend on the means of payment.

87. According to the above, the elimination of single price laws has also been considered, as this would create a favourable environment conducive to rivalry between different means of payment. In some countries, merchants are obliged to establish a single price for the goods they sell; this prevents the merchant from promoting a more beneficial means of payment when transacting with buyers. It is important to note that, by eliminating these obligations on the merchant, the cardholder is no longer allowed to choose which means of payment to use, which could imply a downward pressure on the rates charged on cardholders or merchants. So, the effect of these regulations would oppose the objective of protecting the consumer, given that by limiting competition among means of payment, an increase in the rates charged by established market agents is favoured.

### Case 15. Chile

88. In November 2020 the National Economic Prosecutor's Office (FNE) submitted to the Chilean Court for the Defense of Free Competition some regulatory proposals to foster the ability of merchants to choose the payment mechanisms that they will accept in their establishments (Fiscalía Nacional Económica, 2020):

- (1) Oblige brands to eliminate from their contracts the clauses that prevent merchants from establishing discounts according to the means of payment used by the consumer,
- (2) Establish that businesses are free to choose which type of cards they will accept (prepayment, credit, debit, etc.), since the commission charged by the acquirers per transaction is different depending on the type of card and
- (3) limit the flow of information from the merchant establishment to the acquirer in order to prevent the use of sensitive information from the merchant in negotiating discount rates.

## 5. Conclusion

89. This paper developed the need to further understand the different competition dynamics and challenges present in the interplay between payment systems and technological progress. Clearly, technological progress has brought with it new actors and roles, as well as new challenges that influence the means of intervention of competition and regulatory authorities. However, due to the lack of consensus on issues such as the adjustment of the interchange fee, the types of agreements that PSPs and APPs may have, or the existence of card payment rules, there are still questions that remain unresolved.

90. Some of the questions that could be addressed are the implications of improperly defining markets now that there are new PSPs. For example, should an APP be treated in the same way as a PSP by the regulatory or competition authorities? Does the introduction of APPs within payment systems imply that they should theoretically be approached as two-sided markets? How is market power in these new markets to be determined by the authority? Or how should the issues associated with competition under e-commerce be addressed?

91. There is certainly a long way to go. The heterogeneity of international experiences can shed light on the best way for the authorities to intervene or not. Ultimately, the role of the competition authority is not to converge towards the regulatory authority, nor is it that the latter should intervene in every scenario. Finally, authorities in Latin America and the Caribbean face the usual challenges in terms of low value means of payment and, in some cases, provide alternative measures to promote competition.

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